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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,688	12/02/2003	James H. Biskup SR.	3945-031927	3401

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THE WEBB LAW FIRM, P.C.  
700 KOPPERS BUILDING  
436 SEVENTH AVENUE  
PITTSBURGH, PA 15219

EXAMINER

RUTLAND WALLIS, MICHAEL

ART UNIT PAPER NUMBER

2835

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/725,688	BISKUP ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Rutland-Wallis	2835	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 20-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/01/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of Biskup, Sr. et al. U.S. Patent No. 6,700,224 hereinafter Biskup in view of Scott et al (U.S. Patent No 5,886,504).

With respect to claim 1 both the instant application and claim 1 of the Biskup patent of 6,700,224 recite the same limitations with the exception of claim 1 of the instant application recites in the preamble "A security and energy control system" in the place of "A presence detection and control system" found in line 1 claim 1 of the Biskup patent, the term "switch" is found in the place of the term "relay" found in the Biskup patent, and the term "communication link" is found in the place of the term "communication line" found in the Biskup patent. It would have been obvious to one of ordinary skill in the art at the time of the invention to use some other type of switch other than a relay such a teaching of this may seen in Scott col. 10 lines 10-25 where Scott teaches control switching circuitry may interchangeably be a switch relay diode or transistor and while as understood by the examiner no difference exists between the term "communication line" and "communication link" if applicant hold otherwise the communication of a message on a link other than line such as a infra-red optical or RF signal would have been obvious to one of ordinary skill in the art at the time of the invention.

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With respect to claims 2-10 both the instant application and claim 2 of the Biskup patent of 6,700,224 recite the same limitations.

While claim 11 recites at least one of the switches is a relay and while claim 1 of the Biskup patent recites claim 1 where the switches are relays it would have been obvious to one of ordinary skill in the art at the time of the invention to make at least one of the switches a relay as claim 11 recites.

With respect to claim 12 both the instant application and claim 11 of the Biskup patent of 6,700,224 recite the same limitations with the exception of the term "communication link" is found in the place of the term "communication line" found in the Biskup patent. As understood by the examiner no difference exists between the term "communication line" and "communication link" if applicant hold otherwise the communication of a message on a link other than line such as an infrared optical or RF signal would have been obvious to one of ordinary skill in the art at the time of the invention.

With respect to claim 13-14 both the instant application and claim 12-13 of the Biskup patent of 6,700,224 recite the same limitations.

With respect to claim 15 both the instant application and claim 14 of the Biskup patent of 6,700,224 recite the same limitations, with the exception of the term "communication link" is found in the place of the term "communication line" found in the Biskup patent. As understood by the examiner no difference exists between the term "communication line" and "communication link" if applicant hold otherwise the communication of a message on a link other than line such as an infrared optical or RF

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signal would have been obvious to one of ordinary skill in the art at the time of the invention.

With respect to claim 16 both the instant application and claim 15 of the Biskup patent of 6,700,224 recite the same limitations.

With respect to claim 17-18 both the instant application and claim 16-17 of the Biskup patent of 6,700,224 recite the same limitations the exception of the term "switch" is found in the place of the term "relay" found in the Biskup patent. It would have been obvious to one of ordinary skill in the art at the time of the invention to use some other type of switch other than a relay.

With respect to claim 19 both the instant application and claim 18 of the Biskup patent of 6,700,224 recite the same limitations, with the exception of the term "communication link" is found in the place of the term "communication line" found in the Biskup patent. As understood by the examiner no difference exists between the term "communication line" and "communication link" if applicant hold otherwise the communication of a message on a link other than line such as an infrared optical or RF signal would have been obvious to one of ordinary skill in the art at the time of the invention.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. De Zorzi (U.S. Patent No. 6,232,875), Brunius (U.S. Patent No.

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6,204,760), Bingle et al. (U.S. Patent No. 6,485,081), Holcomb et al. (U.S. Patent No. 5,933,085), Behlke et al. (U.S. Patent No. 6,107,930), del Castillo et al. (U.S. Patent No. 6,275,166) teaches similar devices to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Rutland-Wallis whose telephone number is 571-272-5921. The examiner can normally be reached on Monday-Thursday 7:30AM-6:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn D. Feild can be reached on 571-272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MRW

  
LYNN FEILD  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800